

MAR 15 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

DAVID STATZ,

Petitioner - Appellant,

v.

STATE OF NEVADA,

Respondent - Appellee.

No. 04-17242

D.C. No. CV-01-00515-HDM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Nevada state prisoner David Statz appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition challenging his

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1994 no contest plea conviction for murder and larceny. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

This court granted Statz a certificate of appealability only on the issue of whether the district court should have offered Statz the opportunity to stay his mixed habeas petition so that he could return to state court to exhaust his unexhausted claims. We review for abuse of discretion the district court's decision to grant or deny a "stay and abeyance" of a habeas petition. *See Rhines v. Weber*, 544 U.S. 269, 125 S. Ct. 1528, 1534-35 (2005).

No abuse of discretion occurred here. After determining that Statz's habeas petition was mixed, the district court gave him the opportunity to exercise his options under *Rose v. Lundy*, 455 U.S. 509, 510 (1982), and offered Statz an administrative closure procedure that was the equivalent of a stay and abeyance. Statz rejected that procedure and knowingly and voluntarily elected to abandon the unexhausted claims in order to proceed with the exhausted claims.

We construe the remainder of the arguments in Statz's opening brief as a request to broaden the certificate of appealability. So construed, the request is denied because Statz has not made a "substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2); 9th Cir. R. 22-1(e).

AFFIRMED.